

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CitiBank, N.A., as Trustee for the
Holders of Structured Asset Mortgage
Investments II Inc., Bear Stearns ALT-A Trust,
Mortgage Pass-Through Certificates Series 2006-4,

Plaintiff,

vs.

Russell E. Willits, Republic Bank & Trust Co.,
Discover Bank, FIA Card Services, N.A.,
Ann Strommen, Scott Strommen, State of
Minnesota Department of Revenue, and the
United States of America Internal Revenue
Service,

Defendants.

Court File No. 12-CV-01231 (MJD/JJG)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION FOR
JUDGMENT**

The above-entitled matter came on for hearing before the above-named Court and the undersigned Magistrate Judge on May 17, 2013, upon Plaintiff's motion for default judgment. Bradley N. Beisel appeared on behalf of Plaintiff. There were no other appearances.

The Court makes the following Findings of Fact, Conclusions of Law and Recommendation for Judgment:

FINDINGS OF FACT

1. Defendant Russell E. Willits is the record owner of the real property in Hennepin County, Minnesota described as follows:

Lot 7, Block 1, Gallaway 1st Addition ("Property").

2. Defendant Russell E. Willits and his former spouse, as mortgagors, executed and delivered to Mortgage Electronic Registration Systems, Inc., as mortgagee and nominee for Countrywide Home Loans, Inc., a Mortgage dated April 21, 2006 in the amount of \$304,000.00, which was recorded in the office of the County Recorder, Hennepin County, Minnesota on May 17, 2006 as Document No. 8797325 (“Mortgage Document No. 8797325”).

3. Defendant Russell E. Willits and his former spouse, as mortgagors, executed and delivered to Mortgage Electronic Registration Systems, Inc., as mortgagee and nominee for Countrywide Home Loans, LLC, a Mortgage dated April 21, 2006 in the amount of \$57,000.00, which was recorded in the office of the County Recorder, Hennepin County, Minnesota on May 17, 2006 as Document No. 8797326 (“Mortgage Document No. 8797326”).

4. First Republic Title, LLC, as the agent of Chicago Title Insurance Company, mistakenly released Mortgage Document No. 8797325 pursuant to a Certificate of Release of Mortgage dated February 27, 2007, which was recorded in the office of the County Recorder, Hennepin County, Minnesota on March 14, 2007 as Document No. 8950290 (“Mortgage Release Document No. 8950290”).

5. Mortgage Release Document No. 8950290 was intended to release Mortgage Document No. 8797326.

6. The loan secured by Mortgage Document No. 8797325 has not been paid.

7. Mortgage Electronic Registration Systems, Inc. satisfied Mortgage Document No. 8797326 pursuant to a Satisfaction of Mortgage dated February 21, 2008, which was recorded in the office of the County Recorder, Hennepin County, Minnesota on March 4, 2008 as Document No. 9104917.

8. Mortgage Electronic Registration Systems, Inc., as assignor, assigned Mortgage Document No. 8797325 to Plaintiff, as assignee, pursuant to an Assignment of Mortgage dated June 29, 2011, which was recorded in the office of the County Recorder, Hennepin County, Minnesota on May 16, 2012 as Document No. 9789027.

9. Defendant Russell E. Willits and his former spouse, as mortgagors, executed and delivered to Defendant First Commercial Bank, as mortgagee, a Mortgage dated February 22, 2007 in the amount of \$275,000.00, which was recorded in the office of the County Recorder, Hennepin County, Minnesota on March 14, 2007 as Document No. 8950291 (“Mortgage Document No. 8950291”).

10. On September 7, 2012, Defendant First Commercial Bank was closed by the Minnesota Department of Commerce and the Federal Deposit Insurance Corporation was appointed receiver.

11. Federal Deposit Insurance Corporation and Republic Bank & Trust Company made and entered into a Purchase and Assumption Agreement dated September 7, 2012 wherein Republic Bank & Trust Company purchased certain assets of Defendant First Commercial Bank, including Mortgage Document No. 8950291 and the promissory note secured thereby.

12. Plaintiff and Republic Bank & Trust Company made and entered into a Stipulation wherein the parties agreed to the cancellation of Mortgage Release Document No. 8950290, the reinstatement of Mortgage Document No. 8797325, and that Mortgage Document No. 8797325 is prior and superior to Mortgage Document No. 8950291.

13. On July 21, 2010, Defendant United States of America Internal Revenue Service recorded a Notice of Tax Lien dated July 13, 2010 in the amount of \$39,304.20, in the office of

the County Recorder, Hennepin County, Minnesota as Document No. 9538395 (“Federal Tax Lien Document No. 9538395”).

14. Plaintiff and Defendant United States of America Internal Revenue Service made and entered into a Stipulation wherein the parties agreed to the cancellation of Mortgage Release Document No. 8950290, the reinstatement of Mortgage Document No. 8797325, and that Mortgage Document No. 8797325 is prior and superior to Federal Tax Lien Document No. 9538395.

15. On March 26, 2010, judgment in the amount of \$57,823.51 was docketed in favor of Defendants Ann Strommen and Scott Strommen and against Russell Willits in the District Court, Hennepin County, Minnesota, Court File No. 27-CV-10-672.

16. On July 29, 2010, judgment in the amount of \$8,891.92 was docketed in favor of Defendant FIA Card Services, N.A. and against Russell E. Willits in the District Court, Hennepin County, Minnesota, Court File No. 27-CV-10-17278.

17. On September 20, 2010, judgment in the amount of \$13,752.64 was docketed in favor of Defendant Discover Bank and against Russell E. Willits in the District Court, Hennepin County, Minnesota, Court File No. 27-CV-10-11868.

18. On June 8, 2011, judgment in the amount of \$4,603.27 was docketed in favor of Defendant FIA Card Services, N.A. and against Russell Willits in the District Court, Hennepin County, Minnesota, Court File No. 27-CV-11-12529.

19. On August 13, 2010, Defendant State of Minnesota Department of Revenue recorded a Notice of Tax Lien in the amount of \$11,777.48 in the office of the County Recorder, Hennepin County, Minnesota as Document No. 9547515 (“State Tax Lien Document No. 9547515”).

20. Defendants Russell E. Willits, Ann Strommen, Scott Strommen, FIA Card Services, N.A., Discover Bank, and State of Minnesota Department of Revenue were duly served with Plaintiff's Summons and Complaint but they have not answered or otherwise defended.

21. On August 1, 2012, the Clerk of the above-named Court entered default against Defendants Russell E. Willits, Ann Strommen, Scott Strommen, FIA Card Services, N.A., Discover Bank, and State of Minnesota Department of Revenue.

CONCLUSIONS OF LAW

1. Plaintiff is entitled to default judgment against Defendants Russell E. Willits, Ann Strommen, Scott Strommen, FIA Card Services, N.A., Discover Bank, and State of Minnesota Department of Revenue pursuant to Fed. R. Civ. P. 55(b)(2).

2. Plaintiff is entitled to judgment against Defendant United States of America Internal Revenue Service and Republic Bank & Trust Company pursuant to the parties' Stipulations.

RECOMMENDATION FOR JUDGMENT

1. Plaintiff's motion for default judgment against Defendants Russell E. Willits, Ann Strommen, Scott Strommen, FIA Card Services, N.A., Discover Bank, and State of Minnesota Department of Revenue be GRANTED.

2. Mortgage Release Document No. 8950290 be canceled *nunc pro tunc*.

3. Mortgage Document No. 8797325 be reinstated *nunc pro tunc*.

4. Mortgage Document No. 8797325 be held a valid first lien against the Property and enforceable in accordance with the laws of the State of Minnesota.

5. Mortgage Document No. 8797325 be held as prior and superior to Mortgage Document No. 8950291, Federal Tax Lien Document No. 9538395, State Tax Lien Document

No. 9547515 and any lien claimed by Defendants Ann Strommen, Scott Strommen, FIA Card Services, N.A. and Discover Bank against the Property.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: May 17, 2013

BY THE COURT

____s/Arthur J. Boylan_____
Arthur J. Boylan
United States Chief Magistrate Judge

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before June 3, 2013.